IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 28485 of 2006(N)

PETITIONER:

V.P.AJIT, S/OV.P.CHATHUNNY (LATE),
AGED 59 YEARS, PANIKKASSERIL HOUSE,
ARAKULAM SOUTH, KODUNGALLUR.

BY ADV. SMT.DAISY THAMPI

RESPONDENTS:

IRINJALAKUDA MUNICIPALITY
REPRESENTED BY ITS SECRETARY.

***ADDL.R2 IS IMPLEADED:**

R2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVT.
DEPARTMENT OF LOCAL SELF GOVT.INSTITUTION.

(ADDL.R2 IS IMPLEADED AS PER ORDER DTD. 20/12/06)

***ADDL.R3 IS IMPLEADED:**

R3. THE REVENUE DIVISIONAL OFFICER,
THRISSUR. IS IMPLEADED SUO MOTU AS PER ORDER DTD.2/2/2007.

BY ADV. SRI.D.SOMASUNDARAM-(ADV,COMMR.)
SRI.K.K.CHANDRAN PILLAI , SC for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.28485/2006 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE SALE DEED NO.250 OF 2003 DTD. 28/01/2003 OF SUB REGISTRY OFFICE, IRINJALAKUDA.**

EXT.P2; **COPY OF THE FORM FOR RELINQUISHMENT OF LAND DTD. 16/12/2004.**

EXT.P3: **COPY OF PHOTOGRAPH OF THE PROPERTY SHOWING THE STAGE OF CONSTRUCTION OF THE PROPOSED ROAD.**

EXT.P4: **COPY OF THE REPRESENTATION DTD. 10/10/2006.**

EXT.P5: **COPY OF THE ACKNOWLEDGMENT DTD. 12/10/2006.**

/TRUE COPY/

Kss

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28485 OF 2006

Dated this the 2nd day of February, 2007

JUDGMENT

The Revenue Divisional Officer, Thrissur is impleaded suo motu as additional 3rd respondent in the Writ Petition. Registry will carry out corrections in the cause title. Government Pleader takes notice on behalf of the additional 3rd respondent.

2. Heard Smt.Daisy Thambi, counsel for the petitioner, Sri.K.K. Chandran Pillai, counsel for the 1st respondent-Municipality and learned Government Pleader, Sri.K.J. Muhammed Anzar.

3. It appears to me that the petitioner is having a genuine grievance. He was in absolute possession and ownership of 28½ cents of property from out of which the petitioner had to surrender 14 cents for the construction of a new road proposed by the Municipality through the middle of the property. Ext.P2 is the form for relinquishment of land under the Land Relinquishment Act . Ext.P2 relinquishment application itself will show that the relinquishment was on a condition that the petitioner will be given relaxation from the Building Rules, as per Rule 85-A while he applied for permit for construction of a building in his property.

4. The petitioner's grievance is that after having received a

substantial portion of his property subject to that condition that the Municipality is now being lethargic on the application for building permit submitted by him.

5. Contention of the Municipality is that the petitioner had not submitted any application for building permit at all. Sri.K.K. Chandran Pillai, learned counsel for the Panchayat would submit that subsequently an application for building permit has been filed by the petitioner. But the Municipality is not able to consider/process the application as it is not accompanied by all necessary documents. According to Mr.Chandran Pillai, permit can not be granted without the certificate from the Land User Board(concerned RDO), since the entire property of the petitioner is a paddy field. A communication in that regard is already given to the petitioner.

6. Smt.Daisy Thampy would invite my attention to Section 230(3) of the Municipality Act and submit that it was well within the powers of the Municipality to permit conversion of the paddy field as a garden land or building site. Sri.Chandran Pillai would quickly retort and point out that Section 230 is subject to the explanation which provides that the provisions of the Kerala Land Utilisation order 1967 will continue to operate. Smt.Daisy Thomas would now point out that on 6.1.07 the petitioner has already filed an application under the relevant provisions of the land utilisation order before the additional 3rd respondent for permit for conversion of the land belonging to him. She also referred to

Rule 79 and 85 of the Kerala Municipalities Buildings Rules and submit that the 1st respondent-Municipality is yet to constitute a special committee which is contemplated under Rule 85. The 1st respondent is yet to make a request before the Government for the Constitution of the Committee which is envisaged under Rule 85 of the KMBR. Learned Government Pleader submits that there will not be any serious objection to the additional 3rd respondent, to pass early orders on the application submitted by the petitioner for permit under the rent utilisation order.

7. Having regard to all the circumstances which obtain on this case and the provisions in Rule 79 and 85 of the Kerala Municipality Building Rules which clearly indicate that the intention of the rule maker is to encourage free surrender of lands that the public revenue will be saved. I feel that in this case where the additional 3rd respondent will be justified in considering the application for conversion submitted by the petitioner before him, favourably.

Under these circumstances, the Writ Petition will stand disposed of with the following directions:

The additional 3rd respondent will give top priority to the application for conversion submitted by the petitioner, consider the same favourably and dispose of the same at the earliest and at any rate within three weeks of receiving copy of this judgment. Once the petitioner receives favourable orders on that application he will submit those orders and also other documents which are required for enabling the

Municipality to process the application for building permit, before the Municipality.

The 1st respondent Municipality will make a request immediately to the additional 2nd respondent-Government for the constitution of the Special Committee for the Irinjalakuda Municipality under Rule 85 of the Building Rules should inform the 1st respondent Municipality accordingly. The Petitioner upon receiving orders from the additional 3rd respondent will complete the filing up works on his property. Once the Special Committee and the Municipality are convinced that the petitioner has produced the documents referred to herein above and has filled up his property as a building site, the Municipality will issue the building permit to the petitioner provided the plan submitted by the petitioner is otherwise in order. In view of the above directions the 1st respondent Municipality is permitted to continue with the road construction work.

PIUS C. KURIAKOSE, JUDGE

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